

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEON CONRAD,

Plaintiff,

Case No. 4:06-cv-17

v.

Hon. Wendell A. Miles

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion and Brief Seeking an Attorney Fee Pursuant to the Equal Access to Justice Act. (Dkt. #15). Plaintiff's counsel seeks \$3,710.00 in fees and costs. As discussed below, counsel's motion is **granted**.

Pursuant to the Equal Access to Justice Act (EAJA), the prevailing party in an action seeking judicial review of a decision of the Commissioner of Social Security may apply for an award of fees and costs incurred in bringing the action. *See* 28 U.S.C. § 2412(d)(1)(A). While a prevailing party is not simply entitled, as a matter of course, to attorney fees under the EAJA, *see United States v. 0.376 Acres of Land*, 838 F.2d 819, 825 (6th Cir. 1988), fees and costs are to be awarded unless the Court finds that the Commissioner's position was "substantially justified" or that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

The burden rests with the Commissioner to establish that her position was substantially justified, *see Secretary, United States Dep't of Labor v. Jackson County Hospital*, 2000 WL 658843 at *3 (6th Cir., May 10, 2000), defined as "justified, both in fact and in law, to a degree that could satisfy a

reasonable person.” *Jankovich v. Bowen*, 868 F.2d 867, 869 (6th Cir. 1989). However, the fact that the Commissioner’s decision was found to be supported by less than substantial evidence does not mean that it was not substantially justified. *See Howard v. Barnhart*, 376 F.3d 551, 554 (6th Cir. 2004).

Defendant has not objected to the present motion. Moreover, the Court finds that counsel’s request is reasonable and appropriate. Accordingly, the Court grants counsel’s motion for fees and costs under the EAJA in the amount of three thousand seven hundred ten dollars (\$3,710.00).

IT IS SO ORDERED.

Date: September 29, 2006

/s/ Wendell A. Miles
Wendell A. Miles
United States District Judge